

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2331 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MAQBUL ISMAIL MUNSHI

Versus

BB SWAIN OR SUCCESSOR DIST MAGISTRATE

Appearance:

MR TS NANAVATI for Petitioner

Mr. L.R. Pujari, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 26/10/1999

ORAL JUDGEMENT

Heard learned Advocate Ms. Kruti M. Shah for Advocate Mr. T.S. Nanavati on behalf of the petitioner and learned A.G.P. Mr. L.R. Pujari for the respondents.

1. The detention order dated 13-11-1998 passed by the respondent no.1-District Magistrate, Bharuch, against the petitioner in exercise of powers conferred under

Section 3(1) of the Gujarat Prevention of Antisocial Activities Act, 1985("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution.

2. The grounds of detention supplied to the petitioner under Section 9(1) of "PASA", copy of which is produced on record at Annexure "C" inter alia indicate that two criminal cases were registered against the petitioner at Amod Police Station. The first criminal case is registered vide CR no.75/97 on 29-9-1997 in respect to offences made punishable under Sections 324, 323, 504 read with 114 of the Indian Penal Code and Section 135 of the Bombay Police Act. The second case is registered vide CR no.55/98 on 15-7-1998 in respect to offences made punishable under Secs. 147, 148, 149, 326, ,323, 307 and 504 of the Indian Penal Code and also under Section 25(1)C of the Arms Act. That the petitioner was released on bail in both the cases. The first matter is pending in Court while the other matter is pending investigation.

The grounds of detention further indicate that three witnesses on assurance of anonymity have supplied information against the petitioner and his antisocial activity. The statements of the first two witnesses were recorded on 25-7-1998 and the statement of the third witness was recorded on 31-7-1998. That the first witness has stated in respect to incident that occurred on 4-7-1998, the second witness has stated in respect to the incident that occurred on the day of Idd festival and the third witness has stated in respect to incident alleged to have occurred on 7-6-1998. The detaining authority has further stated in the grounds of detention that Chapter Case no.40/98 was initiated against the petitioner-detenu at Amod Police Station on 19-1-1998 while another case bearing no.83/98 is initiated against the petitioner on 20-7-1998 under Section 110E of the Criminal Procedure Code. Both the cases are pending in the Court of Executive Magistrate.

3. Taking into consideration the aforesaid material, the detaining authority has come to the conclusion that the petitioner is a " dangerous person" within the meaning of Section 2(c) of "PASA". That as petitioner is released on bail, the general provisions of law are insufficient to prevent the petitioner from continuing his nefarious activity and thereby, in order to prevent the petitioner from continuing his antisocial activity which prejudicially affects the maintenance of public order, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the bar on behalf of the petitioner that there is no nexus or a live link between the alleged antisocial activity as stated in the grounds of detention and the date on which the impugned action is taken. That the criminal cases registered against the petitioner are in the month of July and September respectively while the information given by the respondents are also in the month of July, 1998. However, the impugned order is passed on 13-11-1998 i.e. after a delay of about two months from the first incident and four months from the rest of the incidents. That on account of inordinate delay in taking the impugned action subjective satisfaction reached by the detaining authority stands vitiated, and as such, the impugned order is rendered invalid.

5. To support the said submission reliance is placed on the observations made by the Supreme Court in the matter of PRADEEP NILKANTH PATURKAR VS. S. RAMAMURTHI & ORS. (AIR 1994 SC 656). On scrutiny of papers, it appears that grounds of detention does not disclose any fact so as to establish connection between continuation of alleged antisocial activity by the petitioner-detenu and the requirement of taking action under Section 3(1) of "PASA". It is also noteworthy that despite service of rule, no affidavit-in-reply has been filed either by the detaining authority-the respondent no.1 or the State Government-the respondent no.2. The learned A.G.P appearing for the respondents nos.1, 2 and 3 is not in a position to explain the said delay in taking impugned action. In view of the same, it is a clear case where the live link between the alleged antisocial activity of the petitioner and the date on which the impugned action is taken having been snapped, the impugned order passed on 13-11-1998 suffers the infirmity either of non application of mind or vitiated subjective satisfaction of the detaining authority, and as such, is bad in law.

On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 13-11-1998 passed by the respondent no.1 against the petitioner is hereby quashed and set aside. The petitioner-detenu-Maqbul Ismail Munshi is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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